

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of:)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Federal-State Joint Board)	
On Universal Service)	CC Docket No. 96-45
)	
Universal Service Administrative Company)	
Request for Guidance)	
_____)	

**REPLY COMMENTS OF
XO COMMUNICATIONS SERVICES, INC.**

XO Communications Services, Inc. (“XOCS”), through its undersigned counsel, respectfully submits these reply comments regarding the Universal Service Administrative Company’s (“USAC’s”) March 1, 2011 letter requesting guidance on the reseller verification process.

The initial comments filed in response to the Guidance Request underscore the industry’s concern that USAC has lost its way in its application of reseller verification procedures under the FCC’s Universal Service Fund (“USF”) rules. Verizon’s comments best capture the overarching theme of the comments: “What ultimately matters is whether contributions are in fact made.”¹ This is in fact the primary purpose of an audit – to verify from available information that appropriate parties have contributed their required share.

XOCS’s comments on the Guidance Request expressed concern that USAC has deviated from using the audit as a verification and truth-seeking process. Instead, in XOCS’s audit,

¹ *Comments of Verizon and Verizon Wireless*, WC Docket No. 06-122, CC Docket No. 96-45, p. 3 (submitted on April 6, 2011) (“Verizon Comments”).

USAC ignored the best available information confirming the propriety of XOCS’s classification of revenues from resellers. As XOCS showed in its initial comments, it is unlawful for USAC to propose to reclassify revenue when USAC records confirm that the reseller in question had contributed to the Fund in the relevant year(s).² Only by blindly ignoring relevant facts does USAC even reach the question it presents in the Guidance Request. Moreover, the Guidance Request acts as if the question regarding reseller certifications is an either/or decision, when in fact USAC can and should consider all relevant information submitted by a filer during the audit process – including sworn declarations signed by resellers of the filer – that demonstrate that the filer’s revenues should be treated as wholesale revenues.³

Other commenting parties echoed these concerns. Verizon, for example, argued that the existing rules provide flexibility to wholesale carriers in obtaining reseller certifications. This flexibility, Verizon argued, “makes good business sense” because “there are many reasons why a reseller may be delayed in providing an updated annual certification to a carrier.”⁴ The date on the certification “is largely irrelevant to whether a reseller makes independent contributions [to the USF].”⁵ The question, Verizon emphasized, is whether “contributions in fact were made” by resellers, not when a certification is signed.

Similarly, the Ad Hoc Coalition of International Telecommunications Companies opposed the “rigid way [USAC] enforces the carrier’s carrier rule through audits.”⁶ The Ad Hoc

² *Comments of XO Communications Services, Inc.*, WC Docket No. 06-122, CC Docket No. 96-45, pp. 8-12 (submitted on April 6, 2011).

³ *Id.*, at 12-20.

⁴ Verizon Comments at 3.

⁵ *Id.* at 2.

⁶ *Comments of the Ad Hoc Coalition of International Telecommunications Companies*, WC Docket No. 06-122, CC Docket No. 96-45, p. 2 (submitted on April 1, 2011) (“Ad Hoc Coalition Comments”).

Coalition explained that, in an audit, “USAC has created a presumption that each and every carrier along the [wholesale] chain must contribute [to the USF] unless they can meet a high burden of proving that someone else will pay.”⁷ XOCS’s experience is consistent with the Ad Hoc Coalition’s description of the audit process. Although the Ad Hoc Coalition seeks relief that is beyond the scope of this Guidance Request, it notes that USAC’s current approach creates a substantial risk of double counting of revenues subject to the USF.⁸ Such errors not only are unlawful, but also contradict the core purpose of an audit.

Finally, the only other commenter in the initial round, Telepacific, cautioned that USAC “is attempting to reach beyond its function as USF Administrator” and make policy.⁹ Telepacific’s concern is an instance where USAC is questioning whether even compliance with the Form 499 Instructions could be insufficient to classify reseller revenues.¹⁰ This issue further illustrates the need to return USAC to an administrative function and to re-focus the audit process toward verifying whether the reseller made USF payments. Policy issues involving the appropriate interpretation of the USF rules should be addressed outside the filer audit -- by the FCC, and not by USAC through audit findings. These extraneous issues cannot become the basis for altering the limited function of a contributor audit.

Consistent with the whole of the record, XOCS urges the Commission to realign USAC’s auditing process to comply with current law. USAC’s Guidance Request should be addressed as explained in XOCS’s initial comments. The Commission should preclude USAC from seeking to reclassify revenues when the resellers have been confirmed to have contributed to the Fund.

⁷ *Id.* at 4.

⁸ *Id.* at 7.

⁹ *Comments of U.S. TelePacific Corp. d/b/a TelePacific Communications*, WC Docket No. 06-122, CC Docket No. 96-45, p. 2 (submitted on April 6, 2011) (“Telepacific Comments”).

¹⁰ *Id.* at 4-5.

Moreover, to the extent that USAC is presented with alternative evidence supporting the proper classification of revenue as reseller revenue, USAC must consider this evidence in conjunction with other evidence presented by the filer. USAC may not summarily reject a reseller certification based solely on the date on which it was signed.

Respectfully submitted,



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